IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21134 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAHIMBHAI MAHMADBHAI KHILJI - Petitioner(s)

Versus

STATE OF GUAJRAT THR' SECRETARY & 2 - Respondent(s)

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Appearance :
MR KIRTIDEV R DAVE for Petitioner(s) : 1,MR RAHUL K DAVE for Petitioner(s) : 1,
MR MR MENGDEY, AGP for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/10/2005

ORAL JUDGMENT

1.In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Addl.

Development Officer dated 30-9-2005 passed in Revision Application No.43 of 2005 in dismissing the said appeal confirming the order passed by the District Development Officer (DDO) dated 23-2-2005 in removing the petitioner as Sarpanch of Jantran Gram Panchayat.

2. It appears from the record that a criminal prosecution by way of FIR was lodged against the petitioner for the offence punishable under Sections 504 and 506(1) of the Indian Penal Code alleging *inter alia* that the petitioner has given threat to the Public Officer and/or the officer of the Forest Department and the proceedings came to be initiated against the petitioner by the DDO under Section 59(1) of the Gujarat Panchayat Act and after giving an opportunity, the order came to be passed by the DDO removing the petitioner as Sarpanch, against which the petitioner preferred an appeal before the State Government which also came to be dismissed and against which the petitioner has preferred the present Special Civil Application.

3. Shri Kirtidev Dave, learned advocate appearing on behalf of the petitioner has vehemently submitted that a false complaint has been filed against the petitioner and except the offence punishable under Sections 504 and 506(1) of the Indian Penal Code, there is no other offence charged against the petitioner and that except

the petitioner, no other persons are shown as accused. He has also further submitted that because of some political mala fides and the petitioner has filed a complaint under Section 138 of the Negotiable Instrument Act against one member of the Panchayat namely Usman Khilji at his instance, the proceedings are initiated against the petitioner and therefore, it is requested to allow the present Special Civil Application. He has also further submitted that even the DDO initiated the proceedings at the instance and on the basis of the application submitted by one Shri PV Shah, resident of Jambusar, who has no connection with the affairs of the Panchayat. Therefore, it is requested to allow the present Special Civil Application.

4. It is required to be noted that so far as the allegation of *mala fides* and the contention that the proceedings came to be initiated at the instance of one member Usman Khilji against whom the petitioner has filed a complaint under Section 138 of the Negotiable Instrument Act is concerned, the said person is not joined as a party in the present Special Civil Application and therefore the question of *mala fides* cannot be considered in his absence. So far as the contention that the DDO initiated the proceedings at

the instance and on the basis of the complaint filed by one Shri PV Shah, resident of Jambusar, who has no connection with the affairs of the Panchayat is concerned, it is required to be noted that it is immaterial, who has informed the DDO. The source of information to the DDO is immaterial. However, the fact remains that a criminal prosecution has been initiated against the petitioner. So far as the contention on behalf of the petitioner that the complaint has been filed against the petitioner for the offence punishable under Section 504 read with Section 506(1) of the Indian Penal Code is concerned, it is required to be noted that after investigation and inquiry, the police authority has already submitted a chargesheet before the competent court and therefore, it can be presumed that there is a *prima facie* case found against the petitioner and the allegation against the petitioner is that the petitioner has given threat to the Forest Officer, who is a public officer. To give a threat to a Public Officer and Forest Officer by a Sarpanch, who is the head of the Panchayat is certainly an offence involving the moral turpitude.

5. Under the circumstances, when the DDO has passed an order under Section 59(1) of the Act and the same came to be confirmed by the State Government, it cannot be

said that there is an illegality committed by any of the authorities below.

6.Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly dismissed.

(M.R.SHAH,J)

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